

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

WELLS FARGO BANK N.A, AS.	§
TRUSTEE FOR THE CERTIFICATE-	§
HOLDERS OF THE MLMI TRUST,	§
MORTGAGE LOAN ASSET-BACKED	§
CERTIFICATES, SERIES 2005-WMC2	§
	§
<i>Plaintiff,</i>	§
	§
V.	§
	CASE NO. 4:13cv468
	Judge Clark/Judge Mazzant
SABIHA YUSUFZAI and AFRAH	§
YUSUFZAI,	§
	§
	§
<i>Defendants.</i>	§

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On September 12, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Plaintiff's Motion to Remand [Doc. #4] be granted [Doc. #8]. On October 2, 2013, Defendants filed their Opposition of Report and Recommendation [Doc. #10].

This dispute revolves around a post-foreclosure eviction proceeding related to a single-family residence located at 1444 Van Winkle Drive, Carrollton, Texas 75007. Plaintiff, as current owner of the property in question, initiated an eviction proceeding in Justice Court of Precinct 6 of Denton County, Texas. A hearing had been scheduled for August 19, 2013. On

August 15, 2013, Defendants removed this case to this Court pursuant to 28 U.S.C. § 1441, asserting that removal was proper based upon federal question and diversity of citizenship.

The Magistrate Judge recommended granting the motion to remand because Defendants violated the forum defendant rule and there were no federal claims contained in Plaintiff's state court pleadings. The Magistrate Judge also noted that Defendants' claim for wrongful foreclosure is pending in this court in 4:12cv669-RAS-DDB.

Defendants object that the Magistrate Judge failed to address points raised by them, including the question of securitization. Defendants assert that the court must turn its attention to this fact. Defendants' argument is misplaced. The only question before the court is whether removal was appropriate. The issue of securitization is not a claim raised in the state proceedings by Plaintiff and it is not an issue in this case. The issue of foreclosure is not raised in this case, and all issues regarding foreclosure should be addressed in Defendants' other case. The Magistrate Judge is correct that the issue of possession is a separate issue from the question of alleged wrongful foreclosure. The removal of the forcible detainer action is not appropriate. Nothing about the state law forcible detainer action appears to raise issues of federal law, and there is no federal subject matter jurisdiction upon which to base removal. The Magistrate Judge is also correct that forcible detainer actions are governed by the Texas Property Code and are questions of state, not federal, law. *See Tex. Prop. Code Ann.. § 24.001, et seq.*

The only issue raised in the state court is the issue of possession. Defendants cannot challenge the issue of possession in this court. For example, this court cannot issue an injunction to stop the eviction. *See Green v. Bank of America N.A., No. H-13-1092, 2013 WL 2417916, at *1* (S.D. Tex. June 4, 2013); *Knoles v. Wells Fargo Bank, N.A., 513 F. App'x 414, 415* (5th Cir.

2013).

Since there are no federal claims asserted by Plaintiff, and Defendants violated the forum defendant rule, this court is required to remand this action.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by Defendants [Doc. #10], this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court.

It is, therefore, **ORDERED** that Plaintiff's Motion to Remand [Doc. #4] is granted and the case is remanded to Justice Court of Precinct 6, Denton County, Texas, under Cause No. E13-1681J6.

So **ORDERED** and **SIGNED** this **18** day of **October, 2013**.



Ron Clark, United States District Judge